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No. 547

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NORTHWEST ENGINEERING COMPANY, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD AND UNITED STEELWORKERS OF AMERICA, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR UNITED STEELWORKERS OF AMERICA, AFL-CIO, IN OPPOSITION

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United Steelworkers of America, AFL-CIO, was the charging party before the National Labor Relations Board, and intervened in the court below. It is, accordingly, automatically a party herein, although not named in the petition.

The petition raises no question worthy of review by this Court. The Board will undoubtedly so demonstrate in its brief in opposition, and we will not duplicate that showing. Instead, we shall confine this brief to a demonstration that this Court lacks jurisdiction over the petition, because it was not timely filed.

The court below issued its decision *and an accompanying*

judgment[1] on March 24, 1967, and timely petitions for rehearing were denied on April 21, 1967. We believe the time for filing a petition began to run on the latter date, and that the filing of the petition on August 29, 1967, one-hundred-thirty days later, was outside the ninety-day time limit prescribed in 28 U.S.C. Section 2101(c).

Petitioner has apparently assumed that the time for filing did not begin to run until June 3, 1967, the date the court below issued a formal "decree" reiterating the terms of its earlier "judgment."[2] Determination of jurisdiction thus de-

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[1] Petitioner did not include the "judgment" as part of the certified record transmitted to this Court. Accordingly, we have transmitted a certified record of the judgment to this Court, simultaneously with the filing of this brief.

[2] The *judgment*, entered on March 24, 1967, recited as follows:

"JUDGMENT

"These cases came on to be heard on the record from the National Labor Relations Board, and were argued by counsel.

"ON CONSIDERATION WHEREOF, *it is ordered and adjudged by this court that* in case No. 18,921 the Union's petition to modify orders of the National Labor Relations Board is denied; and *in case No. 20,211 the Board's petition for enforcement is granted.*

"Pursuant to Rule 38(1) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with the opinion of this court." (Emphasis supplied.)

The *decree*, entered on June 3, 1967, provided in material part as follows:

"DECREE

". . . On March 24, 1967, the Court, being fully advised in the premises handed down its decision denying the Union's petition to review and granting the Board's petition to enforce said order, as amended *and entered judgment accordingly.*

"ON CONSIDERATION WHEREOF, *it is ordered, adjudged and decreed* by the United States Court of Appeals for the District of Columbia Circuit *that the said order, as amended, of the National Labor Relations Board in said proceedings be enforced,* and that Northwest Engineering Company, its officers, agents, successors and assigns abide by and perform the direction of the Board in said order contained." (Emphasis supplied.)

pends upon whether the time for filing began to run with the entry of the "judgment" (as extended by the petitions for rehearing) or from the later entry of the "decree." We show herein that it was the *judgment*, not the *decree*, which commenced the running of the statutory time period.

28 U.S.C. Section 2101(c) provides as follows:

> "Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

This Court has expressly held that the statutory time period begins to run from a "judgment," and not from a subsequent "decree," unless "the lower Court, in its second order, has disturbed or revised legal rights and obligations which, by its prior judgment, had been plainly and properly settled with finality." *Federal Trade Commission* v. *Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 212 (1952).

Plainly, this case is governed by *Minneapolis-Honeywell*. The judgment "ordered and adjudged" that the Board's petition for enforcement be granted. The decree, inevitably, "ordered, adjudged and decreed" that the Board's order be enforced. The addition of a third operative word, "decreed," is of no more significance here than it was in *Minneapolis-Honeywell*. Indeed, petitioner here fully understood that the judgment of the court below was the decisive document, for it immediately filed its petition for rehearing in the court below without awaiting entry of the formal decree.

In *Minneapolis-Honeywell*, this Court enjoined parties to "take heed of . . . the principle that litigation must at some definite point be brought to an end. It is a principle reflected in the statutes which limit our appellate jurisdiction to those cases where review is sought within a prescribed period. Those statutes are not to be applied so as to permit

a tolling of their time limitations because some event occurred in the lower court after judgment was rendered which is of no import to the matters to be dealt with on review." 344 U.S. at 213.

This principle can have no greater importance than in labor cases. Delay in the ultimate effectiveness of a Board order visits untold harm upon the order's intended beneficiaries. Here, for example, the Board ordered petitioner to bargain with the Union. Until that order becomes effective, petitioner's employees will continue to be denied the benefits of collective bargaining. Petitioner withheld the filing of its petition in this Court until what it conceived to be the latest possible date, in order to prolong the enjoyment of its "Union-free" status. The public interests which inhere in the National Labor Relations Act will continually be thwarted if violators can delay the effective date of remedial action by such formalistic devices as computing the time for filing their petitions for certiorari from the date of the "decree" rather than the date of the "judgment."

CONCLUSION

For the foregoing reasons, the petition should be dismissed for want of jurisdiction.

Respectfully submitted,

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